

ELIZABETH DAY, Bar No. 177125
elizabeth.day@dlapiper.com
GREGORY J. LUNDELL, Bar No. 234941
greg.lundell@dlapiper.com
DLA PIPER US LLP
2000 University Avenue
East Palo Alto, California 94303-2214
Tel: 650.833.2000
Fax: 650.833.2001

JOHN R. HURLEY, Bar No. 203641
john.hurley@dlapiper.com
DLA PIPER US LLP
153 Townsend Street, Suite 800
San Francisco, CA 94107-1957
Tel: 415.836.2500
Fax: 415.836.2501

THOMAS G. PASTERNAK, Bar No. 06207512
(pro hac vice pending)
thomas.pasternak@dlapiper.com
R. DAVID DONOGHUE, Bar No. 06273840 (pro
hac vice pending)
david.donoghue@dlapiper.com
DLA PIPER US LLP
203 North LaSalle Street, Suite 1400
Chicago, IL 60601-1293
Tel: 312.368.4000
Fax: 312.236.7516

Attorneys for Defendants
ALEXA INTERNET, INC. and NIALL
O'DRISCOLL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GIRAFA.COM, INC.,,

Plaintiff,

v.

ALEXA INTERNET, INC.; NIALL
O'DRISCOLL,

Defendants.

CASE NO. C-08-02745 RMW

**DEFENDANTS' STATEMENT IN
RESPONSE TO NOTICE OF PENDENCY
OF OTHER ACTION
[LOCAL RULE 3-13(C)]**

Pursuant to Local Rule 3-13 (c), Defendants Alexa Internet, Inc. (“Alexa”) and Niall O’Driscoll (“O’Driscoll”) hereby file this statement opposing, in part, the Notice of Pendency of Other Action filed by Plaintiff Girafa.com, Inc. on June 30, 2008.

IDENTIFICATION OF OTHER ACTION OR PROCEEDING

Alexa and O’Driscoll do not object to Plaintiff’s characterization of the action Alexa commenced in Texas (the “Texas Action”).

RELATIONSHIP OF OTHER ACTION OR PROCEEDING

Alexa and O’Driscoll do not object to Plaintiff’s characterization of Plaintiff’s claims asserted in this action.

DISTRICT TRANSFER UNDER 28 U.S.C. §1407

Alexa and O’Driscoll oppose Plaintiff’s request that the Texas Action be transferred to this district for pretrial proceedings for several reasons. First, Alexa has opposed Plaintiff’s Motion to Transfer the Texas Action, a copy of which is attached hereto as Exhibit 1. In addition, and with respect to Plaintiff’s third claim that Alexa and O’Driscoll have engaged in unfair competition under California Business & Professions Code §§ 17200 et. seq. by filing the Texas Action, this claim should be dismissed under Fed. R. Civ. Pro. 12(b)(6) for failure to state a claim on which relief can be granted or, in the alternative, stricken pursuant to California Code of Civil Procedure section 425.16. After this third count is dismissed, Plaintiff’s declaratory relief claims of non-infringement and invalidity of the ’548 patent are simply counterclaims that can and should be asserted in the Texas Action, and Alexa intends to file a motion to transfer the claims pending in this district to the Eastern District of Texas for consolidation in the Texas Action.

Dated: July 8, 2008

DLA PIPER US LLP

By /s/ Elizabeth Day
ELIZABETH DAY

Attorneys for Defendants
ALEXA INTERNET, INC. and NIALL
O’DRISCOLL